UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,579	02/23/2004	Richard T. Evers	0638	9925

7590 · 11/04/2005	**EXAMINER**
Kirk D. Houser	RAMPURIA, SATISH

Kirk D. Houser
Eckert Seamans Cherin & Mellott, LLC
44th Floor
600 Grant St.
Pittsburgh, PA 15219

ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		10/785,579	EVERS, RICHARD T.
		Examiner	Art Unit	
		Satish S. Rampuria	2191	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 February 2004*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　　1.☐ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *02/23/04, 10/25/05*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the application filed on Feb 23, 2004.

2.   Claims 1-20 are pending.

Information Disclosure Statement

3.   An initialed and dated copy of Applicant's IDS form 1449 filed on 2/23/2004 and

10/25/2004 are attached to the instant Office action.

Oath/Declaration

4.   The Office acknowledges receipt of a properly signed oath/declaration filed

2/23/2004.

Drawings

5.   The drawings were received on 04/16/2002. These drawings are acceptable by

the examiner.

Specification

6.   The title of the invention is not descriptive. A new title is required that is clearly

indicative of the invention to which the claims are directed.

Claim Objections

7.   Claims 1 and 11 objected to because of the following informalities: The

abbreviation "NT" should incorporate with its full form.

The objection of the base claim is necessarily incorporated into the dependent

claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8.   The following is a quotation of the **second paragraph** of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

9.   Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

Clarification and/or correction are required.

Regarding, claim 1, the limitation, "installer" is unclear as to it used to install the file or

the files are simply gets copied where no installer is needed. In the claim language it

seems that the files are only copying from one location to another.

Regarding, claim 1, the limitation, "associating data" is unclear as to what data is being

associated with Primary Data Stream.

Regarding, claim 11, the limitation, "installer" is unclear as to it used to install the file or

the files are simply gets copied where no installer is needed. In the claim language it

seems that the files are only copying from one location to another.

The rejection of the base claims 1 and 11 is necessarily incorporated into the

dependent claims 2-10 and 12-20 respectively.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

10.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11.   Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is non-statutory because claim recites method for secure installation and operation of software, representing functional descriptive material without a computer readable medium or computer implemented method, method per se is not tangibly embodied. Claims 2-10 are dependent on claim 1 directly or indirectly and further support method for secure installation and operation of software without a computer readable medium or computer implemented method, method per se are not tangibly embodied thus amounts to only abstract idea and are nonstatutory.

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13.   Claims 1, 3-5, 8-10, 11, 12, 14-16 and 19-20 are rejected under 35 U.S.C. 102(a) as being anticipated by the document Phishing in Alternate Data Streams published by Berghel et al. (hereinafter, Berghel) published in Feb 6, 2004.

Per claim 1:

Berghel discloses:

- A method for secure installation and operation of software, said method

  comprising:

- employing an NT File Structure logical volume (page 1 section Alternate Data

  Stream "NTFS the "primary" data stream...");

- employing an installer; writing a Primary Data Stream file to said NT File

  Structure logical volume from said installer (page 1 Alternate Data Stream "large

  number... alternate data stream (ADSs)... associated with... primary data stream

  (PDS)");

- associating data with said Primary Data Stream file (page 1 Alternate Data Stream

  "large number... alternate data stream (ADSs)... associated with... primary data

  stream (PDS)"); and

- writing said associated data to said NT File Structure logical volume as an

  Alternate Data Stream file from said installer (page 1 Alternate Data Stream

  "large number... alternate data stream (ADSs)... associated with... primary data

  stream (PDS)").

  Although, Berghel discloses NTFS and ADS and PDS files in Windows

environment. Berghel is silent on installer. However, the feature deemed to be inherent to

Berghel system. Berghel disclose ADS contains binary executables (page 4, section

Phishing and Executable Streams). Berghel system would in inoperative if the installer is

not present to provide ADS from PDS that includes executable file.

The limitation regarding secure installation and operation of software in the preamble is

not given any patentable weight because the body of the claim does not recite any

limitations related to secure installation and operation of software.

Per claim 3:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- writing, reading or manipulating said Alternate Data Stream file from an

  application program after said writing said associated data (page 3, "Next, we'll

  attach an ADS to an empty file: C:\...\test>echo "this is the first ADS associated

  with file1.txt"> file1.txt:first_ads.txt..." and page 9, section URL Pearls

  "Windows utility that is ideal for ADS manipulation is <cp.exe>").

Per claim 4:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said Primary Data Stream file an executable file (page 4, section

  Phishing and Executable Streams "ADSs may contain anything... most

  interesting type of "anything" is the binary executable...").

Per claim 5:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- creating a Primary Data Stream directory chain (page 2, "will create a new

  directory, <test>");

- writing said Primary Data Stream directory chain to said NT File Structure logical

   volume from said installer (page 2, "will create a new directory, <test>");

- writing said Primary Data Stream file to said Primary Data Stream directory chain

   in said NT File Structure logical volume from said installer (page 2, "since the

   PDSname field is null, <ads0.txt> is by default associated with the subdirectory

   name in the MFT. Directories in Windows are themselves files that reference

   other files");

- associating said data with said Primary Data Stream directory chain or said

   Primary Data Stream file by creating and closing said Alternate Data Stream file

   (page 2, "since the PDSname field is null, <ads0.txt> is by default associated with

   the subdirectory name in the MFT. Directories in Windows are themselves files

   that reference other files" and page 1 Alternate Data Stream "large number...

   alternate data stream (ADSs)... associated with... primary data stream (PDS)");

   and

- installing said associated data to said NT File Structure logical volume as said

   Alternate Data Stream file from said installer (page 1 Alternate Data Stream

   "large number... alternate data stream (ADSs)... associated with... primary data

   stream (PDS)").

Per claim 8:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said associated data first data (page 1 Alternate Data Stream "large

   number... alternate data stream (ADSs)... associated with... primary data stream

(PDS)"); employing as said Alternate Data Stream file a first Alternate Data

Stream file; employing second data (page 1 Alternate Data Stream "large

number... alternate data stream (ADSs)... associated with... primary data stream

(PDS)");

-   associating said second data with said Primary Data Stream file (page 1 Alternate

    Data Stream "large number... alternate data stream (ADSs)... associated with...

    primary data stream (PDS)"); and

-   writing said associated second data to said NT File Structure logical volume as a

    second Alternate Data Stream file from said installer (page 1 Alternate Data

    Stream "large number... alternate data stream (ADSs)... associated with...

    primary data stream (PDS)").

Per claim 9:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

-   displaying said associated data from said Alternate Data Stream file in said NT

    File Structure logical volume (Figure 1 and related discussion).

Per claim 10:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

-   defining in said installation file a Primary Data Stream directory chain, said

    Primary Data Stream file, said Alternate Data Stream file, and at least one

    information file (page 4, section Phishing and Executable Streams "ADSs may

contain anything... most interesting type of "anything" is the binary

executable...");

- displaying said at least one information file from said installation file (page 3,

  Figure 1 and related discussion);

- creating said Primary Data Stream directory chain in said NT File Structure

  logical volume (page 2, "will create a new directory, <test>");

- copying said Primary Data Stream file from said installation file to said Primary

  Data Stream directory chain in said NT File Structure logical volume (page 2,

  "since the PDSname field is null, <ads0.txt> is by default associated with the

  subdirectory name in the MFT. Directories in Windows are themselves files that

  reference other files"); and

- copying said Alternate Data Stream file from said installation file to said Primary

  Data Stream directory chain in said NT File Structure logical volume (page 3,

  "Next, we'll attach an ADS to an empty file: C:\...\test>echo "this is the first ADS

  associated with file1.txt"> file1.txt:first_ads.txt..." and page 9, section URL

  Pearls "Windows utility that is ideal for ADS manipulation is <cp.exe>").

Although, Berghel discloses NTFS and ADS and PDS files in Winodows

environment. Berghel is silent on installer. However, the feature deemed to be inherent to

Berghel system. Berghel disclose ADS contains binary executables (page 4, section

Phishing and Executable Streams). Berghel system would in inoperative if the installer is

not present to provide ADS from PDS that includes executable file.

Claims 11, 12, 14-16 and 19-20 are the system claim corresponding to method claims 1,

3-5, 9 and 10 respectively, and rejected under the same rational set forth in connection

with the rejection of claims 1, 3-5, 9 and 10 respectively, above.

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section
102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the
subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill
in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the
invention was made.

15.   Claims 2, 6, 7, 13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Berghel US in view of US Patent No. 6,744,450 to Zimniewicz et al.

(hereinafter, Zimniewicz).

Per claim 2:

The rejection of claim 1 is incorporated, and further, Berghel does not explicitly disclose

selecting said data from the group comprising an installation log, an application

configuration file, an error log, help information, and database information.

However, Zimniewicz discloses in an analogous computer system selecting said

data from the group comprising an installation log (col. 8, lines 45-47 "error log

indicating why the install cannot proceed"), an application configuration file (col. 7, lines

30-33 "install... pre-configured by the suite owner"), an error log (col. 8, lines 45-46

"...written out to the error log..."), help information (col. 6, lines 41-42 "...a setup

database file..."; the database file is could be a help file as well since computer stores the

help file into a database, emphasis added), and database information (col. 6, lines 41-42

"...a setup database file...").

Therefore, it would have been obvious to a person of ordinary skill in the art at

the time the invention was made to incorporate the method of selecting data from the

various sources as taught by Zimniewicz into the method of installation of ADS PDS files

as taught by Berghel. The modification would be obvious because of one of ordinary skill

in the art would be motivated to have various types of files to provide the user a logical

and easy to understand way that allow them to clearly see the state of the components

affected, and what actions will be performed as suggested by Zimniewicz (col. 3, lines 5-

22).

Per claims 6 and 7:

The rejection of claim 5 is incorporated, and further, Berghel disclose:

- employing an installation file comprising said Primary Data Stream file, said

    Alternate Data Stream file (page 1 Alternate Data Stream "large number...

    alternate data stream (ADSs)... associated with... primary data stream (PDS)"),

    installation instructions, said Primary Data Stream directory chain (page 1

    Alternate Data Stream "large number... alternate data stream (ADSs)...

    associated with... primary data stream (PDS)" and page 2, "since the PDSname

    field is null, <ads0.txt> is by default associated with the subdirectory name in the

    MFT. Directories in Windows are themselves files that reference other files").

Berghel does not explicitly disclose End User License Agreement.

However, Zimniewicz discloses in an analogous computer system End User License Agreement (col. 8, lines 26-30 "the UI Manager 91 displays start up screens to the user during this stage, including Welcome, Name/Organization, Password, product identification (PID), and end user license agreement (EULA) screens").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of comprising an End User License Agreement as taught by Zimniewicz into the method of installation of ADS PDS files as taught by Berghel. The modification would be obvious because of one of ordinary skill in the art would be motivated to use an End User License Agreement before installation to permit the right user to install the custom installation as suggested by Zimniewicz (col. 3, lines 14-22).

Claims 13, 17 and 18 are the system claim corresponding to method claims 2, 6 and 7 respectively, and rejected under the same rational set forth in connection with the rejection of claims 2, 6 and 7 respectively, above.

Conclusion

16.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or
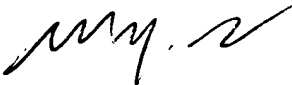
relating to the status of this application should be directed to the **TC 2100 Group**

receptionist: 571-272-2100

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for

the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
Patent Examiner/Software Engineer
Art Unit 2191
10/31/2005

**WEI Y. ZHEN
PRIMARY EXAMINER**